STATE OF MICHIGAN

COURT OF APPEALS

CORNICE & SLATE, L.L.C.,

Plaintiff-Appellant,

v

BLUE CROSS AND BLUE SHIELD OF MICHIGAN,

Defendant-Appellee.

UNPUBLISHED
April 20, 2006

No. 258621
Wayne Circuit Court
LC No. 02-239496-CK

Before: Cooper, P.J., and Cavanagh and Fitzgerald, JJ

PER CURIAM.

This case involves the question of whether defendant is liable for property taxes assessed against plaintiff for plaintiff's easement to use 56 parking spaces in defendant's parking structure. Plaintiff appeals as of right from the trial court's opinion and order denying its motion for summary disposition under MCR 2.116(C)(10) and granting declaratory relief in favor of defendant. The trial court determined that plaintiff was liable for the property taxes. We affirm.

We review de novo the trial court's resolution of plaintiff's motion for summary disposition. *Farmers Ins Exch v Kurzmann*, 257 Mich App 412, 416; 668 NW2d 199 (2003). "[A] motion pursuant to MCR 2.116(C)(10) tests the factual support of a plaintiff's claim and is only appropriate if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Id.* at 417. If it appears to the trial court that the nonmoving party is entitled to judgment, it may render judgment in the nonmoving party's favor. MCR 2.116(I)(2).

Upon de novo review of the parties' easement agreement, we hold that the trial court correctly determined that plaintiff was liable for the property taxes. Under the easement agreement, defendant agreed to grant plaintiff "[a] perpetual and exclusive easement of fifty-six (56) covered parking spaces, at no cost to C&S [plaintiff] . . . ."

An easement is a limited property interest. It constitutes a right to use land burdened by the easement, rather than a right to occupy and possess the land. *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 379; 699 NW2d 272 (2005). When the language of an easement is unambiguous, it is enforced as written. *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003).

A contract is ambiguous if the words used may be reasonably understood in different ways. *Michigan Mut Ins Co v Dowell,* 204 Mich App 81, 87; 514 NW2d 185 (1994). A phrase must be given contextual meaning to determine what it conveys to those familiar with our language and its contemporary usage. *Henderson v State Farm Fire & Casualty Co,* 460 Mich 348, 355; 596 NW2d 190 (1999). The words "no" and "cost" are words of such common understanding that there can be no ambiguity when the two are combined into a phrase and used in a contract. The phrase "no cost" as used in the easement agreement is reasonably susceptible of only one meaning: "cost" equals "price" and "no" equals "not any.". The phrase "at no cost" allows plaintiff to use the 56 parking spaces free of charge or without any price.[1]

The easement document is essentially a contract between two parties, plaintiff and defendant. Reading the easement as a contract, it is clear that the contracting parties considered both certainties and contingencies that would or could create financial liability, and apportioned that liability specifically in writing.[2] Because the parties allocated specific costs that either must or might arise after the initial transaction, we find that "at no cost" in this contract unambiguously means only that defendant would not charge plaintiff any fee in exchange for the grant of the easement to use the parking spaces. We therefore further find that the parties' silence as to the allocation of potential tax liability in this particular case means the parties did not consider that as a potential cost to be allocated as between themselves. The tax liability that in fact arose does not create an issue of contract interpretation as between the parties; it is an issue to be resolved between plaintiff and the third party[3] who has imposed the tax.

The "at no cost" phrase does not obligate defendant to pay for property taxes imposed by law on plaintiff, as the user of the 56 parking spaces. The property taxes constitute plaintiff's

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[1] The same plain language appears in a memo dated February 4, 1999, from one employee of plaintiff to several other employees advising as to when the parking garage would be available for use and reviewing the "general terms and parameters of our use of the 56 spaces": explaining the system whereby users of the garage would be given access cards or could use tokens, the memo noted that "[i]f additional cards are required, BC/BS/M will provide them *at no cost*. No stickers or tokens will be provided, but you may wish to provide them *at your expense*." [emphasis added]

[2] For example, defendant paid plaintiff $300,000 when the easement went into effect for various improvements to plaintiff's building. The parties also agreed that either could, at its own expense, install and maintain security cameras on the building of the other party. And the parties agreed that defendant would be responsible for all ongoing maintenance of the landscaping, but that plaintiff could elect to install, at its own expense, an outdoor patio with tables and chairs, and would thereafter be responsible for the maintenance of said patio.

[3] The tax assessors are not the only third parties with dealings related to this easement. In an interoffice memo dated January 22, 1999, one employee of defendant instructed another to ensure defendant procured "whatever appropriate [insurance] coverage" was needed to "protect [defendant's] interest" in the area of the new parking garage that was the subject matter of the easement granted to plaintiff. Insurance coverage, similar to tax assessment, is a liability outside the four corners of the easement, to be handled as between either party and third party, not as between the two parties to the easement.

personal debt. See MCL 211.181; *Detroit v Nat'l Exposition Co,* 142 Mich App 539, 544; 370 NW2d 397 (1985). Defendant's liability for plaintiff's debt could only be accomplished by expansion of the "at no cost" phrase to include an indemnity provision. "To indemnify is to secure, to save harmless, from loss or damage." *Diamant v Chestnut,* 204 Mich 237, 243; 169 NW 927 (1918). We may not rewrite the parties' easement agreement under the guise of contract interpretation to find an indemnity provision. *Wausau Underwriters Ins Co v Ajax Paving Industries, Inc,* 256 Mich App 646, 653; 671 NW2d 539 (1993). Because defendant, under the unambiguous language of the easement agreement, has no obligation to pay for plaintiff's property taxes, the trial court correctly denied plaintiff's motion for summary disposition and declared that plaintiff was liable for the property taxes.

We decline to address plaintiff's claim regarding whether defendant is immune from paying its property taxes. Because the trial court did not decide this issue, it was not properly preserved for appeal. *Hickory Pointe Homeowners Ass'n v Smyk,* 262 Mich App 512, 516; 686 NW2d 506 (2004). In any event, consideration of this question is unnecessary to a proper resolution of this appeal, because the parties' easement agreement does not require defendant to pay for plaintiff's property taxes.

Affirmed.

/s/ Jessica R. Cooper
/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald